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**DEC 5 - 1996**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

**DOCKET FILE COPY ORIGINAL**

In the Matter of )

Implementation of the Local )  
Competition Provisions in the )  
Telecommunications Act of 1996 )

CC Docket No. 96-98

Interconnection Between Local )  
Exchange Carriers and Commercial )  
Mobile Radio Service Providers )

CC Docket No. 95-185

Administration of the North )  
American Numbering Plan )

CC Docket No. 92-237

To: The Commission

**REPLY OF AMERITECH TO OPPOSITIONS TO ITS  
PETITION FOR CLARIFICATION OR RECONSIDERATION**

Kelly R. Walsh  
John T. Lenahan  
Larry A. Peck  
Michael S. Pabian

Ameritech  
30 South Wacker Drive  
Chicago, IL 60606  
(312) 750-5367

Antoinette Cook Bush  
Mark C. Del Bianco  
Jeffrey A. Brueggeman  
Skadden, Arps, Slate,  
Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 371-7231

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To: The Commission

**REPLY OF AMERITECH TO OPPOSITIONS TO ITS  
PETITION FOR CLARIFICATION OR RECONSIDERATION**

Pursuant to § 1.429(g) of the Commission's Rules, Ameritech submits this reply to various parties' oppositions to Ameritech's Petition for Clarification or Reconsideration of certain issues decided by the Commission in its Second Report and Order ("*Second Order*") in this docket (61 Fed. Reg. 47284).

**I. The Commission Cannot Ignore the Express Language of the Section 251(b)(3) Dialing Parity Requirement in Order to Further the Agenda of Some Parties**

Section 251(b)(3) of the 1996 Act imposes an obligation on local exchange carriers ("LECs") to provide dialing parity and nondiscriminatory access to telephone numbers,

operator services, directory assistance and directory listings to "competing providers of telephone exchange service and telephone toll service." In its petition, Ameritech requested that the Commission reconsider its conclusion that this language requires LECs to provide dialing parity to any competitor that provides either telephone exchange service or telephone toll service.<sup>1</sup> As Ameritech demonstrated in its petition, both the applicable principles of statutory construction and the legislative history require that the Commission reconsider its conclusion to interpret the term "and" as meaning "or" in this context.<sup>2</sup> This is necessary since Congress clearly intended in § 251(b)(3) to address dialing parity between competing local exchange providers, not dialing parity between local exchange providers and toll carriers. Further, Ameritech pointed out that the dialing parity obligation is governed by equal access concepts and § 271(e)(2), not § 251(b)(3).

Several parties attack Ameritech's position.<sup>3</sup> However, none challenges Ameritech's analysis of the legislative history of § 251(b)(3), which conclusively demonstrates that Congress intended to require that a requesting carrier be

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<sup>1</sup> Ameritech Petition at 2.

<sup>2</sup> Id. at 2-5.

<sup>3</sup> Sprint Comments at 2-3; Telecommunications Resellers Ass'n ("TRA") Reply at 10-11; Public Utilities Comm'n of Ohio ("PUCO") Opposition at 2-3; AirTouch Comments at 20-21; AT&T Opposition at 9-10.

providing both telephone exchange and telephone toll service in order to be entitled to non-discriminatory access under § 251(b)(3). Nor do these parties challenge the applicability of the canons of statutory construction relied on by Ameritech. Rather, these parties want the Commission to ignore the express statutory language and the legislative history of the 1996 Act on the grounds that their "interpretation" is more consistent "with the goals of the 1996 amendments to the Communications Act -- to foster competition in the local marketplace."<sup>4</sup> This argument should be rejected on both statutory interpretation and policy grounds.

The Commission cannot ignore the express language of the statute in order to further the agenda of these parties.<sup>5</sup> The Commission recognized as much at various points in the *First Report and Order*,<sup>6</sup> and that recognition should be extended to the interpretation of § 251(b)(3). In accordance with congressional intent, therefore, the Commission's Rules should be amended to reflect that a local exchange carrier's duty with respect to these functions extends only to those other

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<sup>4</sup> AirTouch Comments at 21; PUCO Opposition at 2-3; AT&T Comments at 9.

<sup>5</sup> FCC v. American Broadcasting Co., 347 U.S. 284, 296 (1954).

<sup>6</sup> See, e.g., *First Report and Order* at ¶ 914 (rejecting the argument that the wholesale rates should be ten percent or less in order to encourage facilities-based competitors); *Id.* at ¶ 923 (§ 252(d)(3) does not permit a policy preference for facilities-based providers).

local exchange carriers that provide both telephone exchange service and telephone toll service.

From a policy perspective, there is no reason to ignore the clear wording of § 251(b)(3) and adopt a strained interpretation merely to benefit interexchange carriers ("IXCs"). Dialing arrangements for interLATA toll traffic were previously addressed in the context of equal access, which is preserved under § 251(g) of the 1996 Act, and the intraLATA toll dialing parity obligation of Bell Operating Companies is expressly governed by § 271(e)(2) of the 1996 Act. Further, intraLATA toll dialing involving independent LECs is inherently a local concern driven by the development of competition in the primarily rural and suburban areas served by these carriers, and Congress correctly left that issue to the states.

Ameritech's position is not that it does not have a duty to provide dialing parity for toll traffic originating from its local exchange lines, but rather that its obligation is governed by equal access concepts and by § 271(e)(2). Ameritech submits that Congress did not intend to duplicate these duties by also creating a potentially conflicting toll dialing obligation under § 251. In fact, application of § 251(b)(3) to toll dialing parity with interexchange carriers is not only unnecessary, but it might produce conflicting obligations and absurd interpretations when local dialing parity concepts regarding access to telephone numbers, direc-

tory assistance and directory listings are applied to toll carriers.<sup>7</sup> For these reasons, Congress wisely limited the scope of § 251(b)(3) to dialing parity between competing LECs that provide both toll and local service, and the Commission should do the same.

**II. The Commission Cannot Impose a Nondiscriminatory Access Requirement That Conflicts With the Express Language of Section 251(b)(3)**

Ameritech also argued in its petition that the Commission should reconsider its interpretation of the "nondiscriminatory access" requirement of § 251(b)(3) as also incorporating a duty to provide "access that is at least equal in quality to the access that the LEC provides to itself."<sup>8</sup> As with dialing parity, the Commission's construction conflicts with the canons of statutory interpretation and clear congressional intent in favor of an unduly expansive and unwarranted reading.<sup>9</sup> In particular, Ameritech demonstrated that when Congress in the 1996 Act imposed upon an incumbent local exchange carrier the extraordinary requirement that it provide a service or function on the same basis to unaffiliated carriers as it provides to itself, Congress did so in clear and unambigu-

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<sup>7</sup> For example, if § 251(b)(3) were rigidly interpreted for all toll carriers, then IXCs could argue that they are entitled to their own 7-digit telephone numbers or directory listings.

<sup>8</sup> *Second Order* at ¶ 101.

<sup>9</sup> Ameritech Petition at 6-11.

ous language, and used language other than the term "non-discriminatory."<sup>10</sup>

While numerous parties attack Ameritech's conclusion because of what they perceive to be its unreasonableness,<sup>11</sup> none has challenged the underlying premise that Congress indisputably knew how to require that a carrier provide a service or function on the same basis to unaffiliated carriers as it does to itself, and could have included such a requirement in § 251(b)(3).<sup>12</sup> Congress chose not to do so, and any argument regarding the reasonableness of its intentions should be made to Congress. Despite the position taken by some parties, the Commission cannot simply insert additional requirements into the 1996 Act by administrative fiat.

Moreover, the premise of the argument -- that Ameritech's position is unreasonable -- is itself wrong. Ameritech does not provide access to telephone numbers, operator services, directory assistance, and directory listings to itself, but rather to its customers. As a result, there is no

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<sup>10</sup> Id. at 7-8.

<sup>11</sup> PUCO Opposition at 3; AT&T Opposition at 12-13; TRA Reply at 14; Sprint Comments at 4; MFS Response at 4-5; Teleport Opposition at 5-6.

<sup>12</sup> MFS mischaracterizes Ameritech's argument as being focused on the "placement of individual words and phrases" within the statute. MFS Response at 5. In fact, Ameritech's argument is based on a common sense reading of the 1996 Act as a whole -- Congress consistently used language other than the term "nondiscriminatory" in the 1996 Act when it sought to require that a local exchange carrier provide requesting carriers treatment equal to that which it provides itself.

basis for applying a standard that requires "the same access" as a LEC provides to itself. The more reasonable interpretation of § 251(b)(3) is that Congress imposed a duty to provide nondiscriminatory access as among other carriers and customers. In addition, both the Commission and the state commissions already regulate the quality of service provided to all customers, including competing carriers, and can establish reasonable quality levels that are applicable to all users of a service or facility without engaging in a pretense that a LEC provides network elements to itself. Thus, in accordance with obvious congressional intent, the Commission should amend the rule so as to require local exchange carriers only to provide access that is nondiscriminatory among telecommunications carriers and in accordance with state requirements regarding reasonable levels of quality applicable to all users of a service or facility.



CONCLUSION

For the foregoing reasons, the Commission should clarify and amend the *Second Order* and its rules in order to implement the dialing parity and nondiscrimination requirements in a manner that is consistent with the language and intent of the 1996 Act.

Respectfully submitted,


AMERITECH

Kelly R. Welsh  
John T. Lenahan  
Larry A. Peck  
Michael S. Pabian

Ameritech  
30 South Wacker Drive  
Chicago, IL 60606

(312) 750-5367

By:

  
Antoinette Cook Bush  
Mark C. Del Bianco  
Jeffrey A. Brueggeman  
Skadden, Arps, Slate,  
Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 371-7230

Dated: December 5, 1996

## **CERTIFICATE OF SERVICE**

I, Kelly N. McCollian, hereby certify that on this 5th day of December, 1996, true and correct copies of the foregoing "Reply of Ameritech To Oppositions To Its Petition For Clarification or Reconsideration" were served by hand delivery (\*) or by first-class mail on the following parties:

Chariman Reed E. Hundt \*  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Commissioner James H. Quello \*  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

Commissioner Susan Ness \*  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Commissioner Rachelle B. Chong \*  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Pater Arth, Jr., Edward W. O'Neill,  
Mark Mack Adu  
505 Van Ness Avenue  
San Francisco, CA 94102  
Attorneys for the People of State of  
California and the Public Utilities  
Commission of the State of California

Ronald E. Russell  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, MI 48911

Aaron I. Fleischman, Stuart F. Feldstein  
Fleischman and Walsh  
1400 16th Street, N.W.  
Washington, D.C. 20036

Attorneys for Time Warner  
Communications Holdings, Inc.

Paul B. Jones, Janis A. Stahlhut,  
Donald F. Shephard  
Time Warner Communications  
Holdings, Inc.  
300 Stamford Place  
Stamford, CT 06902

Margot Smiley Humphrey  
Attorney for NRTA  
Koteen & Naftalin, LLP  
1150 Connecticut Avenue, NW  
Suite 1000  
Washington, D.C. 20036

Lisa M. Zaina, Ken Johnson  
Attorneys for OPASTCO  
21 Dupont Circle NW  
Suite 700  
Washington, D.C. 20036

3000 K Street, NW, Suite 300  
Washington, D.C. 20007

Roy L. Morris  
Director, Public Policy  
Frontier Communication Services, Inc.  
1990 M Street, NW, Suite 500  
Washington, D.C. 10026

David Cosson  
L. Marie Guillory  
Steven E. Watkins  
Attorneys for NTCA  
2626 Pennsylvania Avenue, NW  
Washington, DC 20037

Michael J. Shortley, III  
Attorney for Frontier Corporation  
180 South Clinton Avenue  
Rochester, NY 14646

Lawrence St. Blanc, Secretary  
Gayle T. Kellner, Esq.  
Louisiana Public Service Commission  
P. O. Box 91154  
Baton Rouge, LA 70821-9154

Robert J. Sachs  
Howard B. Homonoff  
Continental Cablevision, Inc.  
Lewis Whart, Pilot House  
Boston, MA 02110

Brenda L. Fox  
Continental Cablevision, Inc.  
1320 19th Street, Suite 201  
Washington, D.C. 20036

Morton J. Posner, Eric J. Branfman  
Swidler & Berlin, Chtd.  
Attorneys for GST Telcom, Inc.

John G. Lamb, Jr.  
Northern Telecom Inc.  
2100 Lakeside Blvd  
Richardson, TX 75081-1599

Nebraska Rural Development  
Commission  
P.O. Box 94666  
Lincoln, Nebraska 68509-4666

Stephen L. Goodman  
Halprin, Temple, Goodman & Sugrue  
Counsel for Northern Telcom, Inc.  
1100 New York Avenue, NW, Suite 600  
Washington, D.C. 20005

Steven T. Nourse, Assistant  
Attorney General  
Public Utilities Section  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43266-0573

Richard M. Tettelbaum, Associate  
General Counsel  
Citizens Utilities Company  
1400 16th Street, NW, Suite 500  
Washington, DC 10036

Timothy R. Graham, Robert M. Berger,  
Joseph M. Sandri, Jr.  
Winstar Communications, Inc.  
1146 19th Street, NW  
Washington, DC 20036

Robert A. Mazer, Albert Shuldiner, Mary  
Pape  
Vinson & Elkins  
Counsel for the Lincoln Telephone and  
Telegraph Company  
1455 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-1008

Dana Frix, Mary Albert, Antony Petrilla  
Swidler & Berlin, Chtd.  
3000 K Street, NW, Suite 300  
Washington, DC 20007  
Attorneys for Winstar

Riley M. Murphy, Charles Kallenbach  
American Communications Services, Inc.  
1311 National Business Parkway, Suite 100  
Annapolis Junction, MD 20701

Mary McDermott, Linda Kent, Charles Cosson,  
Keith Townsend  
United States Telephone Association  
1401 H Street, NW, Suite 600  
Washington, DC 20005

J. Manning Lee, Teresa Marrero  
Teleport Communications Group, Inc.  
One Teleport Drive, Suite 300  
Staten Island, NY 10311

Brad E. Mutschelknaus, Steve Augustino  
Kelley, Drye & Warren  
Attorneys for American  
Communications Services, Inc.  
1200 19th Street, NW, Suite 500  
Washington, DC 20036

James D. Ellis, Robert M. Lynch,  
David F. Brown  
Attorneys for SBC Communications, Inc.  
175 E. Houston, Room 1254  
San Antonio, TX 78205

Mark J. Tauber, Mark J. O'Connor  
Piper & Marbury, L.L.P.  
Attorneys for Omnipoint Corporation  
1200 19th Street, NW, 7th Floor  
Washington, DC 20036

Robert C. Schoonmaker  
Vice President  
GVNW Inc./Management  
P.O. Box 25969  
Colorado Springs, CO 80936

Kathy L. Shobert  
Director, Federal Affairs  
General Communications, Inc.  
901 15th Street, NW, Suite 900  
Washington, DC 20005

Anthony Epstein, Donald Verrilli,  
Maureen F. Del Duca  
Jenner and Block  
Counsel to MCI Telecommunications Corp.  
601 13th Street, NW  
Washington, DC 20005

Charles C. Hunter  
Hunter & Mow, PC  
Attorneys for Telecommunications  
Resellers Association  
1620 I Street, NW, Suite 701  
Washington, DC 20006

Mary L. Brown  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

David N. Porter  
Vice President, Government Affairs  
MFS Communications Company, Inc.  
3000 K Street, NW, Suite 300  
Washington, DC 20007

J. Scott Bonney  
Vice President, Regulatory and External  
Affairs  
Nextlink Communications, L.L.C.  
155 108th Avenue, NW  
Bellevue, WA 98004

Davis Wright Tremaine, Daniel M.  
Waggoner  
Attorney for Nextlink Communications  
2600 Century Square, 1501 Fourth Avenue  
Seattle, WA 98101

William Barr, Ward Wueste, Gail Polivy  
GTE Service Corporation  
1850 M Street, NW, Suite 1200  
Washington, DC 20036

Richard E. Wiley, R. Michael Senkowski,  
Jeffrey S. Linder  
Wiley, Rein & Fielding  
Attorneys for GTE Service Corporation  
1776 K Street, NW  
Washington, DC 20006

Lawrence D. Crocker, III  
Acting General Counsel  
Public Service Commission of the  
District of Columbia  
450 Fifth Street, NW  
Washington, DC 20001

Judith St. Ledger-Roty  
Attorneys for Paging Network Inc.  
1301 K Street, NW  
Suite 1100 - East Tower  
Washington, DC 20005-3317

Howard Symons, Cherie Kiser  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
Attorneys for NCTA  
701 Pennsylvania Avenue, NW, Suite 900  
Washington, DC 20004

Mark Rosenblum, Roy Hoffinger,  
Stephen Garavito, Richard Rubin  
AT&T Corporation  
295 North Maple Avenue, Room 324511  
Basking Ridge, NJ 07920

Daniel Brenner, Neal Goldberg,  
David Nicoll  
NCTA  
1724 Massachusetts Avenue, NW  
Washington, DC 20036

Mark E. Haddad  
Sidley & Austin  
Attorneys for AT&T Corporation  
1722 Eye Street, NW  
Washington, DC 20006

Charles H. Kennedy  
Morrison & Foerster, LLP  
Attorney for the Western Alliance  
2000 Pennsylvania Avenue, NW, Suite 5500  
Washington, DC 20006

Raymond Bender, Jr., J.G. Harrington  
Dow, Lohnes & Albertson  
Attorneys for Vanguard Cellular  
Systems, Inc.  
1200 New Hampshire Avenue, NW,  
Suite 800  
Washington, DC 20036

Saul Fisher, William Balcerski  
Attorneys for NYNEX Telephone  
Companies  
1111 Westchester Avenue  
White Plains, NY 10604

Thomas Taylor, Jack Harrison  
Cincinnati Bell Telephone  
2500 PNC Center  
201 E. Fourth Street  
Cincinnati, OH 45202

Richard Metzger, Emily Williams  
Association for Local  
Telecommunications Services  
1200 19th Street, NW, Suite 560  
Washington, DC 20036

Leon Kestenbaum, Jay Keithley,  
H. Richard Juhnke  
Sprint Corporation  
1850 M Street, NW, 11th Floor  
Washington, DC 20036

M. Robert Sutherland, Richard M. Sbaratta,  
A. Kirven Gilbert III  
Attorneys for Bellsouth  
1155 Peachtree Street, NE, Suite 1700  
Atlanta, GA 30309-3610

Michael E. Glover, Leslie A. Vial,  
James Pachulski  
Attorneys for Bell Atlantic  
1320 North Court House Road, 8th Floor  
Arlington, VA 22201

Robert McKenna, Kathryn Marie Krause,  
James T. Hannon  
Attorneys for US West, Inc.  
1020 19th Street, NW, Suite 700  
Washington, DC 20036

Jeffrey Sheldon, General Counsel  
Sean Stokes, Senior Staff Attorney  
UTC  
1140 Connecticut Avenue, NW, Suite 1140  
Washington, DC 20036

Michael J. Ettner  
Senior Assistant General Counsel  
Personal Property Division  
General Services Administration  
18th and F Street, NW, Room 4002  
Washington, DC 20405

Andrew Lipman, Russell Blau  
Swidler & Berlin, Chartered  
3000 K Street, NW, Suite 300  
Washington, DC 20007  
Attorneys for MFS Communications  
Company, Inc.



Riley Murphy, Charles Kallenbach  
American Communications Services, Inc.  
131 National Business Parkway, Suite 100  
Annapolis Junction, MD 20701

Werner Hartenberger, Leonard Kennard  
Dow, Lohnes & Albertson  
Attorneys for Cox Communications, Inc.  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036

Margaret Garber  
Attorneys for Pacific Telesis  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004

Brad E. Mustschelknaus, Steve Augustino  
Kelley Drye & Warren  
Attorneys for American  
Communications Services, Inc.  
1200 19th Street, NW, Suite 500  
Washington, DC 20036

Marlin Ard, Randall Cape, John Bogoy  
Pacific Telesis  
140 New Montgomery Street, Room 1530A  
San Francisco, CA 94105

Donald Russell, Andrew Joskow  
John Henly, Luin Fitch  
Antitrust Division  
U.S. Department of Justice  
555 4th Street, NW, Room 8104  
Washington, DC 20001

James A. Hirshfield, President  
Summit Communications, Inc.  
3633 136th Place Southeast, Suite 107  
Bellevue, WA 98006

John H. O'Neill, Jr., Robert E. Conn,  
Norman J. Fry  
Attorneys for Duquesne Light Company  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037-1128

Robert J. Brill, Associate Counsel  
New England Power Service Co.  
25 Research Drive  
Westboro, MA 01582

Stephen E. Morgan, Linda R. Evers  
Ohio Edison Company  
76 South Main Street  
Akron, OH 44308

Michael A. Rump, Senior Attorney  
Kansas City Power & Light Company  
1201 Walnut, P.O. Box 418679  
Kansas City, MO 64141-9679

Frederick M. Joyce, Elaine D. Critides  
Attorneys for Celpage, Inc.  
Joyce & Jacobs  
1019 19th Street, N.W., 14th Floor, PH-2  
Washington, D.C. 20036

Greg P. Mackay  
Attorney for Puget Sound Power & Light  
Perkins Coie  
411 108th Avenue, N.E., Suite 1800  
Bellevue, WA 98004-5584

John H. O'Neill, Jr., Robert E. Conn,  
Norman J. Fry  
Attorneys for Public Service Co. of  
New Mexico  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037-1128

Sarah D. Smith  
General Attorney, Electric Services  
Public Service Company of New Mexico  
Alvarado Square, Mailstop 0806  
Albuquerque, NM 87158

Shirley S. Fujimoto, Christine M. Gill  
Attorneys for American Electric Power  
Service Corporation  
McDermott, Will & Emery  
1850 K St., N.W., Suite 500  
Washington, D.C. 20006

Russell D. Lukas  
Attorney for Beehive  
Telephone Company, Inc.  
Lukas, McGowan, Nace &  
Gutierrez, Chartered  
1111 19th Street, N.W., Twelfth Floor  
Washington, D.C. 20036

Richard D. Gary, Charles A. Carrathers III  
Attorneys for Virginia Electric &  
Power Company  
Hunton & Williams  
951 E. Byrd Street  
Richmond, VA 23219

Frank A. Schiller, Esq.  
Virginia Power  
One James River Plaza, 701 E. Cary Street  
Richmond, VA 23219-3932


New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Daniel P. Venora  
Northeast Utilities Service Co.  
P.O. Box 720  
Hartford, CT 06141-0270

Jeffery A. Froeschle, Corporate Counsel  
Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, FL 33733

John H. O'Neill, Jr., Robert E. Conn  
Norman J. Fry  
Attorneys for Delmarva Power &  
Light Company  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037-1128

John D. McMahon, Mary J. Krayske  
Consolidated Edison Company of  
New York, Inc.  
4 Irving Place, Room 1815S  
New York, NY 10003

  
Kelly N. McCollian